* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: March 7, 2007

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\+ W.P.(C) 6779/2001

KANHIYA LAL SHARMA ..... Petitioner
Through Mr. Fanish K. Jain, Advocate

versus

D.V.B. ..... Respondent
Through Mr. Jayant Nath, Senior Advocate with
Mr. Rajnish K. Jain, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

ORDER

: Dr. S.MURALIDHAR, J (open court)

1. The challenge in this writ petition is to the impugned bill dated 16.4.2001 raised by the erstwhile Delhi Vidyut Board ('DVB') in the sum of Rs.3,05,600/- pursuant to an inspection carried out on 17.3.2001 in the petitioner's premises.

2. The learned counsel for the petitioner submitted that the bill was raised without considering the petitioner's reply to the show cause notice dated 17.3.2001 which was received by the DVB on 23.3.2001 and therefore, there has been a violation of the principles of natural justice. Secondly, he submitted that

the matter was referred to the Permanent Lok Adalat ('PLA'), which by an order dated 13.9.2001 recorded an observation that a study of the consumption pattern for more than a year previous to the date of the inspection, for the purposes of determination of fraudulent abstraction of energy (FAE) would be irrational. However, since the matter could not be settled and the case was closed by the PLA and the petitioner was given the liberty to approach the court/forum for appropriate remedy. Thirdly, learned counsel for the petitioner refers to an Office Order dated 19.7.1999 issued by the DVB, which states that the mere existence of possibility of insertion of a foreign object to retard the rotation of the disk need not mechanically be construed as conclusive evidence and an analysis of the consumption pattern would also be necessary. Pointing out the consumption pattern in the two years previous to the inspection, learned counsel for the petitioner states that the figures stated by the respondent have been erroneously computed and that there is no dramatic reduction in the consumption pattern to warrant an inference of FAE. He referred to para 5 of the writ petition which indicates the consumption pattern as under:

Period	Average Monthly	%age comparison with the Computed consumption
Feb. 1999 to Feb. 2000	5339.16	89.94%
Feb. 2000 to Feb. 2001	6442.50	108.5%

Feb. 1999 to Feb. 2001	5890.8	99.3%

3. In reply, Mr. Jayant Nath, learned senior counsel appearing for the respondent states that in a case of FAE, the question of a prior notice did not arise. Therefore the adherence to the principles of natural justice by way of appropriate notice of hearing cannot be insisted upon. He referred to a decision of the Hon'ble Supreme Court in ***M.P. Electricity Board, Jabalpur & Ors. v. Harsh Wood Products*** (1996) 4 SCC 522.

4. Referring to the inspection report, Mr. Nath, states that the Inspection Team went to the site on 16.3.2001 but could not carry out the inspection since, even according to the petitioner, he was not present at the site and it was also not open. While it is true that at the time of inspection on the subsequent date i.e., 17.3.2001, the connected load of 39.571KW was found against the sanctioned load of 40KW, a further load of around 29 KW was found disconnected. He states that this would show that the petitioner took advantage of the one day's delay in carrying out the inspection.

5. Referring to the office order dated 19.7.1999, Mr. Nath points out that while the mere tampering of the meter glass would not be sufficient, the collateral evidence gathered in the instant case indicates that it is a case of FAE. According to him, the impugned bill is justified. He further submits that although there is some error in the calculation of the consumption

pattern as regards the year 2001, the consumption pattern of the previous three years justified the inference of FAE.

6. As regards the first submission of non-consideration of the reply given by the respondent to the show cause notice dated 17.3.2001, which reply was received by the DVB on 23.3.2001, this Court is of the view that having issued a show cause notice to the petitioner, it was incumbent on the DVB to consider the reply before taking a final decision. The decision of the Hon'ble Supreme Court in ***M.P. Electricity Board, Jabalpur*** (supra) is distinguishable in that in that case no show cause notice had at all been issued to the consumer. In the context of the present case however, a show cause notice having been issued, the non-consideration of the reply to the show cause notice before raising the bill is fatal to its validity. However, the matter does not turn entirely on this aspect alone.

7. The inspection report dated 17.3.2001 points to the fact that "gasket of meter window glass between glass and meter body on the upper side found tampered. Some scratches were also observed on glass as well which tantamounts to the manipulation of the consumption by the consumer." However, the learned counsel for the petitioner referred to the Office Order dated 19.7.1999, which deals with this specific contingency, and suggests the following course of action to be adopted:

> ""(c) Accessibility to the metering equipment is found plus some collateral

> evidence to support the conclusion that the consumer had actually caused the meter to record less energy than the energy actually passing through it.
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> In case of (c) above, the mere existence of possibility of insertion of a foreign object to retard the rotation of the disk need not mechanically be construed as conclusive evidence. The possibility of meter glass having broken or being loose due to some reason, either accidentally or by mischief , or tampering by a previous occupant etc. should also be taken into account. Therefore, analysis of the consumption patter viz-a-viz the sanctioned/connected load and other circumstantial evidence (like accessibility of the meter to others in a common place or outside the premises) is necessary. In case the consumption is consistent and commensurate with the load in sue at the time of inspection, then normally an advance inference should not be drawn against the consumer. Conversely, if the consumption is low or inconsistent, this circumstances (together with the possibility of insertion of a foreign object) should normally be regarded as sufficient, in the absence of any clear contrary circumstances."

8. What therefore is clear that the mere existence of a tampered meter is not determinative of FAE, absent any collateral evidence. The emphasis is on the analysis of the consumption pattern.

9. The answer to the question therefore turns on the consumption pattern for a period of six months previous to the date of the inspection. Here again the question is whether it is open to the DVB to insist on the three years' consumption pattern as pointed out by the PLA in its order dated 13.9.2001 or should it be restricted to one year previous to the date of

inspection.

The reasoning given by the PLA in this matter is under:

> "The basis and rational behind the study of the consumption pattern for a period of one year is that the department notionally accepts for the purpose of settlement that the FAE was committed by the petitioner for four months and twice the penalty is imposed on such consumer and so consumption pattern if not for four months during which FAE has been allegedly committed, at the most for only one year needs to be compared against computed consumption. Study of consumption pattern for more than a year and for three years will also be hypothetical and irrational as element of subjectivity and conjectures would come in as it would be presumed without any basis that the consumer must have been using this load continuously for last three years. It would thus not be a case of FAE."

10. This Court accepts the rationale explained by the PLA for restricting the period of observation of consumption pattern to one year prior to the inspection. If so reviewed, the consumption pattern in the present petition does not justify an inference of FAE. The respondent cannot possibly rely on the consumption units recorded in the year 2001 to support an adverse inference when the bill itself is dated 16.4.2001 and is based on an inspection report dated 17.3.2001.

11. For all the above reasons, the impugned bill dated 16.4.2001 cannot be sustainable in law and is hereby quashed. Accordingly, this writ petition is allowed. Any payment made by the petitioner towards the impugned bill pursuant to any interim

order will be refunded to the petitioner together with six per cent interest per annum from the date of deposit till date of refund. The petitioner will make an appropriate application to the respondent in this regard within two weeks from today and if so made it will be dealt with by the respondent and the necessary refund, if any, will be made to the petitioner within a period of four weeks thereafter.

12. With these directions, the writ petition is allowed with no order as to costs.

Sd/-
S. MURALIDHAR, J
MARCH 07, 2007
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